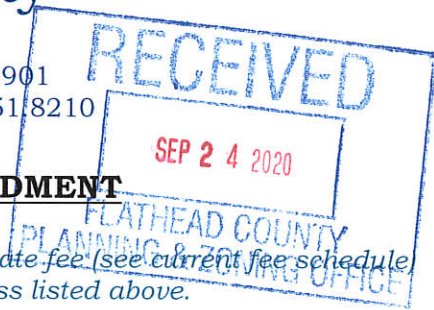




Flathead County

Planning & Zoning

1035 1st Ave W, Kalispell, MT 59901
Telephone 406.751.8200 Fax 406.751.8210



PETITION FOR ZONING AMENDMENT

Submit this application, all required information, and appropriate fee (see current fee schedule) to the Planning & Zoning office at the address listed above.

FEE ATTACHED \$ 1453.00 + 75.00

APPLICANT/OWNER:

1. Name: Donovan Bergeson Phone: (406)253-7719
2. Mail Address: 255 Scenic Ridge
3. City/State/Zip: Kalispell, MT 59901
- 4 Interest in property (if map amendment): Owner

Check which applies: ☒ Map Amendment ☐ Text Amendment:

TECHNICAL/PROFESSIONAL PARTICIPANTS:

1. Name: Sands Surveying Inc. Phone: (406) 755-6481
2. Mailing Address: 2 Village Loop
3. City, State, Zip: Kalispell, MT 59901
4. Email: eric@sandssurveying.com

IF THE REQUEST PERTAINS TO AN AMENDMENT TO THE TEXT OF THE ZONING REGULATIONS, PLEASE COMPLETE THE FOLLOWING:

- A. What is the proposed zoning text/map amendment? N/A

IF THE REQUEST PERTAINS TO AN AMENDMENT TO THE ZONING MAP PLEASE COMPLETE THE FOLLOWING:

- A. Address of the property: 100 Scenic Ridge and 4095 Hwy 93 South North
- B. Legal Description: Tracts 1 (North and South of County Road) and Parcel A of COS 21075

(Lot/Block of Subdivision or Tract #)

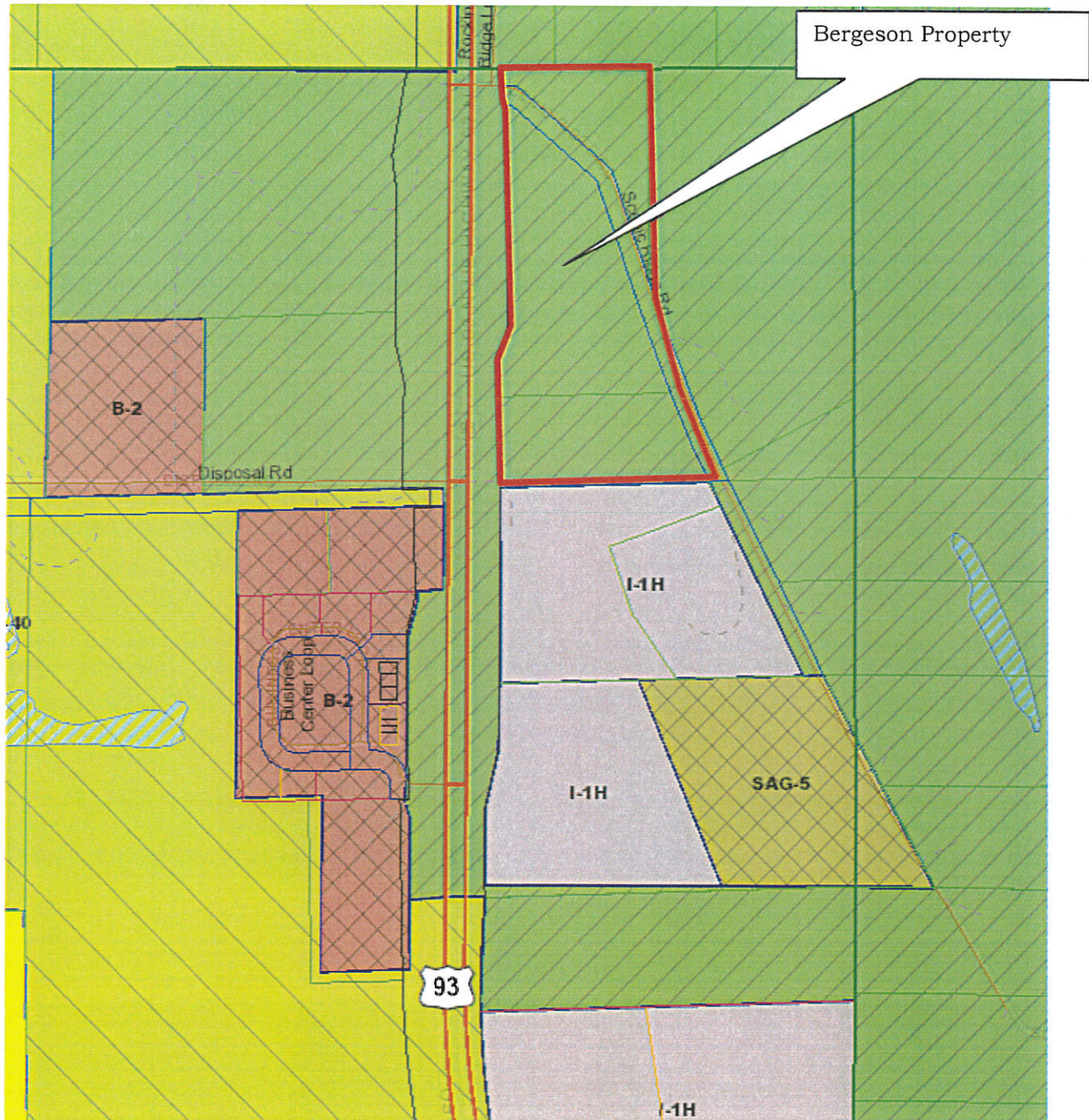
1 - T29N - R22W
Section Township Range

(Attach sheet for metes and bounds) See attached metes and bounds for the two zoning designations

- C. Total acreage: 16.8 acres.
- D. Zoning District: Highway 93 North Zoning District
- E. The present zoning of the above property is: SAG-10 (Suburban Agricultural)
- F. The proposed zoning of the above property is: I-1H (Light Industrial - Highway)
- G. State the changed or changing conditions that make the proposed amendment necessary: The property is located along Highway 93 North in the vicinity of the Flathead Valley Landfill. The property on the west side of the Highway is

zoned for commercial and industrial uses. In recent years properties to the south have been rezoned to I-1H one of which was the applicant's property. The highway frontage in the vicinity of the landfill is better suited to light industrial use than residential use. The topography of the subject properties also creates a distinction between what would be light industrial use and the Suburban Agricultural use.

Figure 1



Source: Flathead County GIS, Zoning Layer

THE FOLLOWING ARE THE CRITERIA BY WHICH ZONING AMENDMENTS ARE REVIEWED. PLEASE PROVIDE A RESPONSE AND DETAILED EXPLANATION FOR

EACH CRITERION FOR CONSIDERATION BY THE PLANNING STAFF, PLANNING BOARD, AND COMMISSIONERS.

1. Is the proposed amendment in accordance with the Growth Policy/Neighborhood Plan?

The Flathead County Growth Policy provides the following guidance for industrial use and the area around the County Landfill:

Flathead County currently has approximately 333,136 acres that are zoned. Many of the lands are located around or between the business centers of Flathead County generally known as Bigfork, Kalispell, Evergreen, Whitefish, and Columbia Falls. Of the 333,136 acres of land with regulated land uses, only 1,467 acres are zoned for uses commonly defined and industrial. A limited quantity of land makes land prices higher and creates difficulties for businesses seeking efficient locations. This situation leads industrial business owners to acquire property further from services than they might otherwise desire, typically in unzoned areas of the County. Industry located far from services creates problems for water, sewer, transportation, safety and human services.” (FCGP, Chapter 2, Part 5: Industrial Land Uses)

“Given the growing increases in annual waste production, the landfill is a critical amenity for the public health of the County. As the community grows adjacent to the landfill operations it is critical to maintain an understanding and application of compatible land use decision making. Land uses which are compatible to the district operations (e.g. low intensity industrial and commercial, etc.) should be encouraged and uses not compatible discouraged (e.g. medium to high density residential.” (FCGP, Chapter 7, Part 1: Solid Waste)

The proposed I-1H zoning designation support the growth policy with low intensity industrial classifications.

The Growth Policy Map identifies the property as “Agriculture”. The Flathead County Growth Policy Map is not a future land use designation map that is traditionally used with a Growth Policy but an existing land use map that generally depicts the existing zoning categories as its base.

The Flathead County Growth Policy identifies a number of Goals and Policies that support the proposed Map Amendment.

G.2 – Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.

P.3.3 – Maintain flexibility of land use option to forest and agriculture land owners by focusing on mitigating the negative impacts of development.

The proposed industrial zoning is compatible with agricultural uses in that industrial land owners do not complain about neighboring agricultural practices particularly when they don't live off the property. In addition, light industrial uses do not complain or oppose use and expansion of the Flathead County Landfill which is technically an industrial use.

G.4 – Preserve and protect the right to farm and harvest as well as the custom, culture, environmental benefits and character of agriculture and forestry in Flathead County while allowing existing landowners flexibility of land use.

The I-1H designation is compatible with adjacent agricultural uses as these industrial uses don't complain about dust or noise from tractors and farm equipment.

P.4.3.- Identify a desirable gross density for rural residential development that retains land values, preserves the agricultural character of the community and allows for efficient provision of government services (law enforcement, fire protection, transportation, etc.)

The I-1H allows small lots but the applicants operate a use that requires a large area for display. Light industrial uses typically use little water and produce little waste water. The Highway 93 corridor provides convenient access for police and fire services

2. Is the proposed amendment designed to:

- a. Secure safety from fire and other dangers? The proposed action of the zone change will neither increase nor reduce the dangers of fire, panic, or other hazards. When the property is developed or subdivided, the developer will have to design the development for primary and emergency ingress and egress by coordinating with the MDOT and emergency services. There are no wetlands or floodplain on the property.

- b. Promote public health, public safety and the general welfare? The property is accessed by a private approach onto Highway 93 along the Highway but the property also abuts Scenic Ridge Road which is County up to the McDonald property. The Flathead County Sheriff's Office provides police protection and the West Valley Volunteer Fire District provides fire and ambulance service.

The I-1H zoning is significantly different from the existing SAG-10 zoning, but it is the same zoning as the property to the south and similar to the commercial designations located on the west side of the Highway. Although the Flathead County Land Fill is zoned SAG-10, it is an industrial use with truck traffic, recycling stock piles, composting, noise, odor, etc.

- c. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements? The 16.8 acre property is bordered by Highway 93 on the west side and Scenic Ridge Road on the east side. Any development of industrial or commercial use will require modification of existing approach permits for access.

Water and sewer would most likely be developed with on-site systems if the property were to be subdivided. There are no structures currently on the property subject to rezoning so no sewer or water facilities exist on site. In general small industrial uses consume very little water and generate very little waste water as these facilities general just have a restroom for employees and water for the coffee maker.

The property is within the Whitefish School District. Industrial use does not generate school aged children. The Subdivision regulations do not require parkland dedication for industrial lots.

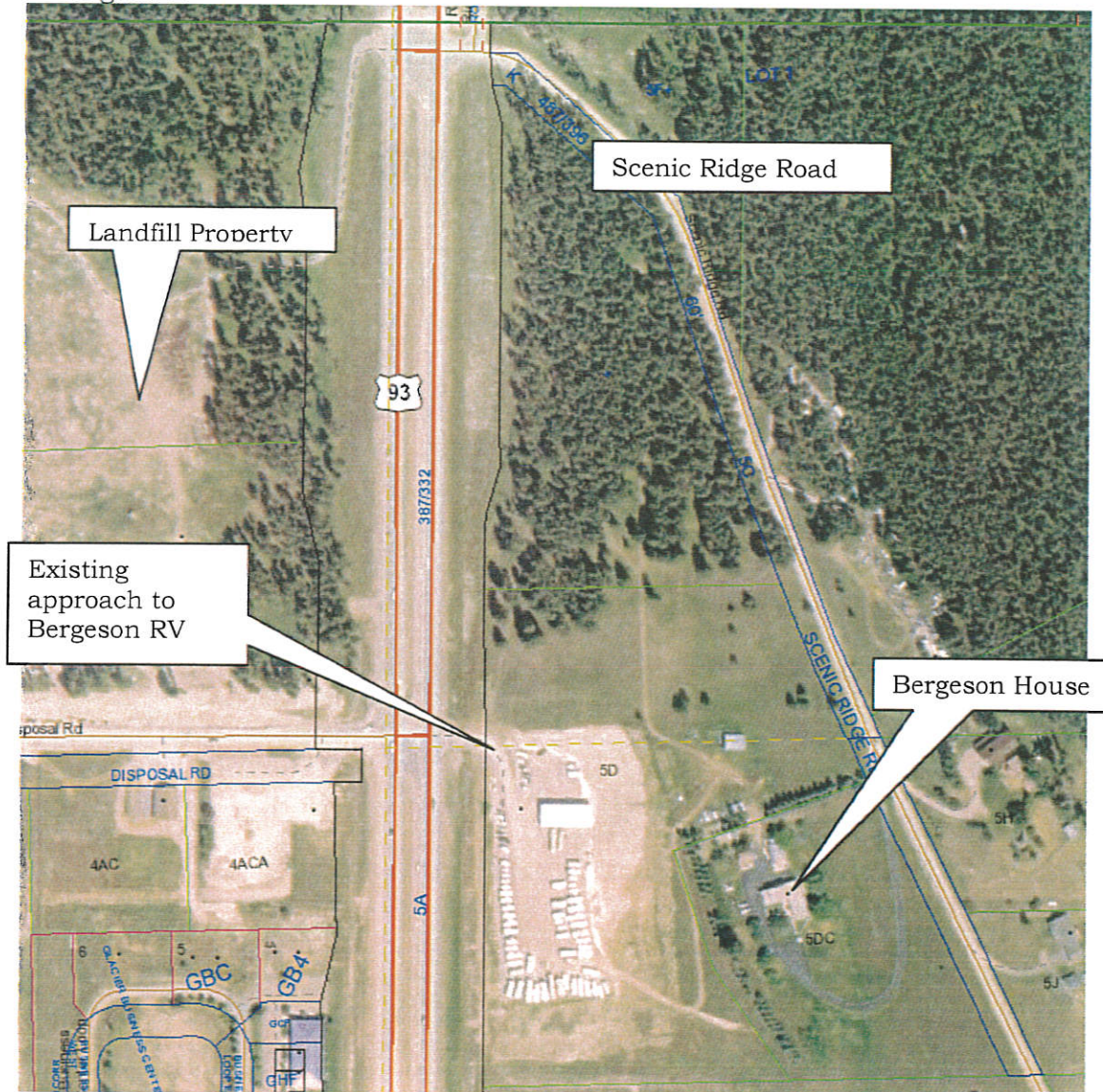
3. Does the proposed amendment consider:

- a. The reasonable provision of adequate light and air? The I-1H zoning classification was created for Highway application as it requires a large, 100-foot front setback to facilitate highway expansion and aesthetic considerations such as landscape buffers between parking/display areas

and the highway. The proposed zoning designations would provide adequate light and air.

- b. The effect on motorized and non-motorized transportation systems? The property has an existing approach onto Highway 93 at the Bergeson RV Center, if a commercial or industrial use were to be placed on the property, than the property owner would need to coordinate with the MDOT to improve or share the approach. The property also has access to Scenic Ridge Road and should access be requested off said road the property owner would need to request permission and a permit from the Flathead County Road and Bridge Department. There are no pedestrian paths in the area.

Figure 2



- c. Compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities? The subject property is located approximately one mile north of the Kalispell City Limits. Kalispell has approved a commercial node at the intersection of Church Drive and Highway 93. The City recently approved commercial growth around the intersection of 93 and Rose Crossing (Under Construction). It would appear the City of Kalispell discourages commercial growth except when they provide the design guidance. The I-1H zoning was selected in part because it has design guidance for setbacks and landscape buffering and the allowed land uses are compatible with the Landfill. The proposed zone change is directly across the Highway from the Flathead County Landfill which is utilized by the Cities of Kalispell and Whitefish. I am sure that neither City wants incompatible uses to encroach upon the landfill and cause conflict over the operation or expansion of this use. We citizens of Flathead County would be hard pressed to find another location for the landfill that is centrally located and that would not impact already existing uses.
- d. The character of the district and its peculiar suitability for particular uses? The area around the subject parcel includes a County Landfill, Professional Office Space, a Restaurant, Storage buildings, a Dog Kennel, a future church, the Bergeson RV Dealership, and residential/suburban agricultural use. The Highway frontage in the vicinity of the landfill is mostly commercial/light industrial.

Considering the provisions of Spot Zoning and the “Three Part Test” as provided by legal precedent in Little vs. Board of County Commissioners. Spot Zoning is determined by the Court to be an illegal action if the request is found to meet **all** three of the tests. The three tests are as follows:

- i. *The zoning allows a use that differs significantly from the prevailing use in the area.*

The Light Industrial Zoning matches that of the property to the south and is similar to the Commercial Zoning west of the Highway. Lastly, although not zoned industrial, the Flathead County Landfill is one of the largest industrial uses in the County when considering the acreage devoted to the use. The landfill generates large volumes of truck traffic, stockpiles recyclable material such as automobiles and appliances, they compost large amounts of vegetation, and the facility creates dust, noise, and odor. The landfill is also a necessary land use for the County and as such land use patterns around the facility need to be compatible.

- ii. *The zoning applies to a small area or benefits a small number of separate landowners.*

The proposed zone change would designate approximately 16.8 acres of additional I-1H (Light Industrial) lands. The proposed application joins approximately 45 acres of land already zoned I-1H in multiple ownerships. The B-2 zoning across the highway allows for similar types of none residential use. Although the landfill is located in an Agricultural zone and allowed with a Conditional Use Permit, this use is an industrial use.

- iii. *The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and this is in the nature of special legislation.*

As stated previously, a number of the neighboring landowners have light industrial zoning or have a use such as the landfill that is industrial.

As presented the proposed zone change application does not meet the three tests for "spot zoning" and therefore should be considered a legal request.


- e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area? The highway frontage would not make good residential use particularly since the neighboring uses along the highway are commercial or industrial. The proposed zone change should not impact neighboring land uses.

4. Is the proposed amendment, as nearly as possible, compatible with the zoning ordinances of nearby municipalities?

The subject property is located approximately one mile north of the Kalispell City Limits. Kalispell has approved a commercial node at the intersection of Church and Highway 93. The City recently approved commercial growth around the intersection of 93 and Rose Crossing. It would appear the City of Kalispell discourages commercial growth except when they provide the design guidance through the PUD process.

The I-1H zoning was selected, in part, because it has design guidance for setbacks and landscape buffering. The proposed zone change is also in the vicinity of the Flathead County Landfill which is utilized by the Cities of Kalispell and Whitefish. I am sure that neither City wants incompatible uses to encroach upon the landfill and cause conflict over the operation of the landfill. The citizens of Flathead County would be hard pressed to find another location for the landfill that is centrally located and that would not impact already existing uses.

The signing of this application signifies approval for the Flathead County Planning & Zoning staff to be present on the property for routine monitoring and inspection during approval process.


Owner/Applicant Signature(s)

9-21-2020
Date

APPLICATION PROCESS

APPLICABLE TO ALL ZONING APPLICATIONS:

A. Pre-Application Meeting:

A pre-application meeting is highly recommended. This can be scheduled at no cost by contacting the Planning & Zoning office. Among topics to be discussed are: Master Plan compatibility with the application, compatibility of proposed zone change with surrounding zoning classifications, and the application procedure.

B. Completed application.

C. Application fee.

D. The application must be accepted as complete by the Flathead County Planning & Zoning staff prior to the date of the planning board meeting at which it will be heard in order that requirements of state statutes and the zoning regulations may be fulfilled.

APPLICABLE TO APPLICATIONS FOR ZONE CHANGE:

A. Application Contents:

1. Completed Zone Change application, including signatures of all property owners applying for zoning map amendment.

IF this is a **MAP** amendment the following are also required:

- i) A map showing the location and boundaries of the property (*vicinity map*).
- ii) A Title Report of the subject property
- iii) **Certified** Adjoining Property Owners List must be submitted with the application (*see forms below*). The list will be sent directly to the Planning & Zoning office, unless you request otherwise. This list is valid for a period of 6 months from date generated. You may also get a certified adjoining landowners list from a title company if you choose.